

BOARD OF APPEALS CASE NO. 5329

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BEFORE THE

APPLICANT: Jonathan Dart

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an addition
within the required 35 foot rear yard
setback; 606 Sandray Terrace, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 2/26/03 & 3/5/03

HEARING DATE: April 7, 2003

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Record: 2/28/03 & 3/7/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Jonathan Dart, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an addition within the required 35 foot setback (24 feet requested), in an R2/COS District.

The subject parcel is located at 606 Sandray Terrace, within the subdivision of Fountain Glen. The parcel is more particularly identified on Tax Map 49, Grid 1F, Parcel 276, Lot 207. The parcel contains 7,550 square feet (approximately 0.17 acres), is zoned R2/COS, and is entirely within the Third Election District.

Mr. Jeffrey Hoilman appeared on behalf of the Applicant. Mr. Hoilman is a contractor employed by American Design and Build, Ltd. The Applicant is seeking approval to construct an 18 foot by 12 foot sunroom addition to the rear of the home. Nearly all of the sunroom, 11 feet, will encroach into the required 35 foot setback. The lot is small and the existing home is only one foot from the rear setback line. To the rear of the Applicant's home, approximately 125 feet away, is the rear yard neighbor. There are some trees and other foliage to the rear of the Applicant's house. Mr. Hoilman testified that, in his opinion, this sunroom was much like other sunroom additions he and his company have constructed in Harford County, including this subdivision. He did not feel that the addition would have any adverse impacts.

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Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. The Department has recommended denial of the request. In looking at the overall request, the Department concluded that this lot was not unique. It is similar in size and shape to other lots in the neighborhood. Mr. McClune pointed out that many of the homes in this neighborhood are built at or near the rear yard setback. Approval, in his opinion, would require the Hearing Examiner to ignore the requirements of the Harford County Code. Mr. McClune, referring to Attachment 8 of the Staff Report, pointed out that this particular lot is very much like others in the immediate area and an approval in this case could represent a carte blanche approval for similar variances in the remainder of the neighborhood. From a planning perspective, Mr. McClune pointed out that uniform encroachments into rear yard setbacks are undesirable and violate the intent and purpose of the Harford County Zoning Code.

There were no persons that appeared in opposition to the request.

CONCLUSION

The Applicant, Jonathan Dart, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an addition within the required 35 foot setback (24 feet requested), in an R2/COS District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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In Maryland, the law regarding variances is well settled and the law was summarized by the Court of Special Appeals in the case of Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995), wherein the Court said:

“The variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property’s uniqueness exists.

It is the uniqueness or peculiarity of the property causing an abnormal impact of the ordinance upon the property that must be addressed and found to exist before the practical difficulties are considered. The term, “unique” in the zoning context means:

In the zoning context, the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon the neighboring property. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls. North v. St. Mary’s County, 99 Md. App. 502, 638 A.2d 1175 (1994)

The uniqueness or peculiarity of the property is one which is not shared by neighboring properties and where the uniqueness of the property results in an extraordinary impact upon it by virtue of the operation of the statute. The uniqueness must exist in conjunction with the ordinance’s more severe impact.”

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The Hearing Examiner finds that the subject parcel is not unique. It is similar in size and shape to surrounding properties. There are not unique topographical conditions or other unique circumstances associated with the lot that justify the need for the requested variance. It is a small lot, but not unlike others in the immediate neighborhood. The Maryland courts that have examined similar issued have determined that the need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the Applicant. City of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74, 76-77 (1952). The Zoning code allows other uses on this parcel, including a deck, patio or screened-in porch.

Having failed to find the uniqueness required by the Harford County Code and Maryland law, the Hearing Examiner recommends denial of the application.

Date MAY 6, 2003

William F. Casey
Zoning Hearing Examiner